

BERMUDA SUPREME COURT

(1) Gold Seal Holding Limited (2) Five Star Investments Limited (3) Oung Shih Hua (Also Known As James Oung) (4) Huang Weizong Martin (5) Kwok Wai Chi -v- (1) Paladin Limited (2) Chen Te Kuang (Also Known As Mike Chen) (3) Law Fong [2014] SC (BDA) 66 CIV (27 August 2014)

PLACING AGREEMENT - CHANGE OF CONTROL - URGENT INJUNCTION TO RESTRAIN SPECIAL GENERAL MEETING - APPROPRIATE FORUM (BVI)

Paladin Limited, the first Defendant, is a Bermudian company listed on the Hong Kong Stock Exchange which is ultimately owned by various members of the Oung family. The present proceedings were commenced by the controllers of the first Defendant to challenge the implementation and validity of a 29 April 2014 Placing Agreement and resolution transferring control over Paladin to the second and third Defendants, and purportedly approved by Paladin's Board of Directors on 19 May 2014.

On 21 May 2014, Hellman J granted an, *ex parte*, injunction restraining the implementation by Paladin of the said Placing Agreement. Following an *inter partes* hearing on 29 May 2014, he discharged that injunction on the grounds that, *inter alia*, there was no serious issue to be tried and that damages would have been an adequate remedy. On 13 June 2014, the Plaintiffs filed a Statement of Claim in which an additional complaint emerged. The Board of Paladin was alleged to have failed to convene a special general meeting ("SGM") requisitioned by the first and second Plaintiffs under Section 74 of the *Companies Act, 1981*, who accordingly themselves convened the SGM for 16 June 2014. The Defence filed on 26 June 2014 countered that the Board itself had duly convened a SGM and that the 16 June 2014 SGM had not been validly convened. The purpose of the SGM was in practical terms for the controllers of Paladin to reassert control of the composition of the Board.

In this application, the second Defendant sought an urgent injunction restraining Paladin from holding a SGM due to be held on the 1 August 2014 and from putting to its shareholders at any meeting any resolutions, or otherwise passing or putting into effect any resolutions, which have the effect, directly or indirectly, of altering the Board composition of the Respondent. The Judge refused this application and made the following useful observations:

"In the present case, the only substantive causes of action explicitly supported by evidence lay against the second Defendant, Five Star Investment Limited ("Five Star"), which is resident in the British Virgin Islands, and related to matters (the status of its shareholding and the proposed exercise of its corporate power through voting its shares in Paladin at the SGM) that are primarily governed by BVI law. It was not contended by the second Defendant that the BVI Court was not competent to grant injunctive relief in support of any arguable claim that the exercise of Five Star's power to vote its shares in Paladin ought properly to be restrained pending a determination of the dispute as to who was entitled to control Five Star".

Accordingly, BVI appeared to be both the most appropriate forum for the substantive action concerning the control of a BVI company and the most suitable venue for seeking the specific type of interim relief sought instead from this Court.

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